IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 1757 of 2002(A)

AA.251/1998 of A.A.(LAND REFORMS),TRIVANDRUM
OA.56/1993 of LAND TRIBUNAL, KOLLAM

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REVN. PETITIONER: 2ND RESPONDENT/2ND RESPONDENT

SALMA BEEVI, (POWER OF ATTORNEY HOLDER OF MOHAMMED SHAH) POOVANNAM VEEDU, VALIYAKADA CHERRY, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS: APPLICANT/APPELLANT/1ST RESPONDENT/1ST RESPONDENT

1. RUKIYA BEEVI, D/O. SULEKHA BEEVI, KANDATHIL PURAYIDAM, BEACH NORTH, KOLLAM.

2. THAJUDEEN, KANDATHIL PURAYIDAM, BEACH NORTH, KOLLAM.

3. STATE OF KERALA, REP.BY THE SECRETARY, REVENUE DEPARTMENT, SECRETARIATE, TRIVANDRUM.

R1 BY ADV. SRI.C.R.SIVAKUMAR
R3 BY GOVERNMENT PLEADER SRI K.G.BHASKARAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO.1757/2002

ORDER ON CMP.NO.3339/2006 IN CRP.NO.1757/2002

Dismissed

20/7/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN J.

C.R.P.No.1757 OF 2002

Dated this the day 20th of July, 2007

O R D E R

Petitioner herein is the power of attorney holder of one Mohammed Shah, who obtained a decree against the 2nd respondent-Thajudeen in a suit instituted by him as O.S.No.94/87 on the file of the Principal Sub Court, Kollam. According to her, as per the registered agreement of sale, the 2nd respondent agreed to sell an extent of 4 cents of property for a consideration of Rs.25,000/-. On default the petitioner sought specific performance by instituting a suit, which eventually was decreed and a document was also executed through court on 30/12/1995 in the execution proceedings. Curiously enough the lst respondent herein set up a kudikidappu claim against the 2nd respondent and as stated in paragraph 2 of the order of the Land Tribunal, the 2nd respondent even gave a mutual consent to allow the application, obviously because the 2nd respondent has no interest in the property after the decree. The lst respondent filed O.A.No.56/93 before the Land Tribunal contending that she is in possession of the land along with a hut therein ever since 1967. Petitioner coming to know of these proceedings, got herself impleaded and resisted the claim of the lst

respondent. According to the petitioner, she is only to defeat the fruits of the decree obtained by him in the suit instituted by him against the 2nd respondent that the 2nd respondent inducted the lst respondent herein and hence the lst respondent has no valid right over the property in question and the petitioner is the absolute owner of the property. To prove the factual possession from 1967 onwards the only piece of evidence available on record seems to be that of the report of the Revenue Inspector, which was however not accepted by the Land Tribunal. The Land Tribunal came to the conclusion that the lst respondent has not established by placing necessary evidence in the case that he had been in occupation of the land and in continues possession prior to the execution of the decree and therefore the O.A. was dismissed. On appeal by the lst respondent, the Appellate Authority reversed the finding against which this revision is filed.

2. I have perused the judgment of the Land Tribunal as well as the Appellate Authority. The Land Tribunal rejected the report of the Revenue Inspector, since the report was not based on any materials. The report of the Revenue Inspector that the lst respondent is in possession of the property in 1967 onwards is not supported by any other independent materials in the case. Exts.A1 and A2 are electoral cards issued during 1990 and 1992 which would not have substantiated the contention to prove possession prior to 1/1/1970 and even in those documents there are

discrepancies. The name of the husband in the card is different as Meera Sahib. There is also discrepancy in the house number shown. The petitioner on the other hand produced Exts.B5 and B6, voters list of the year 1975 and 1979 to show that nobody resided in the property as claimed by the lst respondent. The Appellate Authority however placed reliance on the report without saying that what is Exts.B1 to B6 and what is the fact that is proved by these documents. It is true that the Appellate Authority can re-appreciate the evidence with cogent reasons. No good grounds are shown as to why the order passed by the Tribunal rejecting the Revenue Inspector's report in any way wrong or illegal. The order passed by the Appellate Authority is far away from satisfactory.

3. In the circumstances, the order passed by the Appellatle Authority, which is impugned in this revision, is set aside. The matter is remitted to the Appellate Authority for fresh consideration in accordance with law. The parties shall appear before the Appellate Authority on 8th October, 2007. Sent back the records.

C.R.P. is allowed as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1757 OF 2002

O R D E R

20th July, 2007